



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 4, 1992

Ms. Diana L. Granger  
Acting City Attorney  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-8828

OR92-186

Dear Ms. Granger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14766.

The Water and Wastewater Utility Department of the City of Austin has received a request for copies of all statements related to a certain City of Austin demotion hearing, including the names of the witnesses who provided the statements. You claim that the requested information is excepted from required public disclosure by the informer's privilege, as incorporated into the Open Records Act by section 3(a)(1), and section 3(a)(11).

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that the requested information is excepted from required public disclosure by the informer's privilege, as incorporated into the Open Records Act by section 3(a)(1). Open Records Decision No. 549 (1990). The informer's privilege applies when a person reports violations of the law to officials having a duty to enforce the law. Open Records Decision No. 515 (1988) (copy enclosed). The informer's privilege aspect of section 3(a)(1) does not protect written statements complaining of a public employee's work performance by fellow workers when those statements do not reveal crimes or the violation of specific laws to officials charged with enforcing those laws. *Id.*

We have examined the documents submitted to us for review. Although the written statements document possible violations of the law, you have not demonstrated nor is it otherwise apparent that the Water and Wastewater Department has the duty to enforce these laws. *See id.* Accordingly, the requested information may not be withheld from required public disclosure under the informer's privilege aspect of section 3(a)(1).

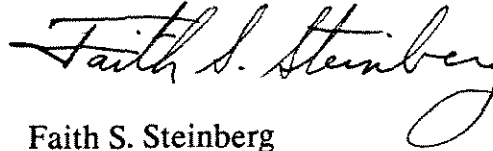
You also claim that the requested information is excepted from required public disclosure by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." "It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process." Open Records Decision No. 538 (1990) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision No. 470 (1987)). Advice, opinion, and recommendations recorded in a performance evaluation of an employee are protected from public disclosure if they are used in the deliberative process. Open Records Decision No. 468 (1987) at 1; *see also* Open Records Decision Nos. 464 (1987); 345 (1982). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

Having examined the documents submitted to us for review, we conclude that some of the requested information constitutes advice, opinion, or recommendation. The employee evaluation forms submitted to us for review may be withheld from required public disclosure in their entirety under section 3(a)(11) of the Open Records Act. We have marked the remaining information which may be withheld under section 3(a)(11). The remainder of the information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please

refer to OR92-186.

Yours very truly,

A handwritten signature in cursive script, reading "Faith S. Steinberg". The signature is written in dark ink and is positioned above the printed name and title.

Faith S. Steinberg  
Assistant Attorney General  
Opinion Committee

FS/GK/lmm

Enclosures: Open Records Decision No. 515

Ref.: ID# 14766

cc: Mr. Tom Medders  
Water and Wastewater Utility  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767